

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte MANFRED KIESER, GERHARD EDLER,
TONY L. F. DAPONTE
and PATRICK C. M. VERSCHAEREN

Appeal No. 1998-1412
Application 08/397,124

HEARD: March 20, 2001

Before, LIEBERMAN, TIMM and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

Decision on appeal under 35 U.S.C. § 134

Applicants appeals the decision of the Primary Examiner finally rejecting claims

12-17. We have jurisdiction under 35 U.S.C. § 134.¹

¹ The claims on appeal have been amended by an after final amendment, paper no. 13, filed May 5, 1997. The Examiner indicated that upon filing the appeal, the amendment would be entered. (Paper no. 14, mailed May 25, 1997).

BACKGROUND

According to Appellants, the invention is directed to a composite material useful as a solar screen in growing plants. The composite comprises a transparent polymer and a green interference pigment to reflect the green portion of visible light. (Brief, page

2). Claim 12 which is representative of the invention is reproduced below:

12. Solar radiation screening composite material which comprises;

a transparent polymer selected from the group consisting of low density polyethylene, ethylenevinylacetate copolymer, polytetrafluorethylene [sic, polytetrafluoroethylene], polyvinylidenechloride, polyvinyl chloride, polycarbonate, polymethylacrylate or mixtures thereof; and

a green interference pigment.

As evidence of unpatentability, the Examiner relies on the following reference:

Armanini

5,008,143

Apr. 16, 1991

THE REJECTION

The Examiner entered the following ground of rejection:

Claims 12-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by

Armanini. (Examiner's Answer, page 3).

OPINION

Appellants have indicated (Brief, page 3) that, for the purposes of this appeal, claims 12-17 will stand or fall together. Accordingly, we will select one claim as representative of all of the claims on appeal. Note *In re King*, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). We will limit our discussion to claim 12 which is the sole independent claim.

Our initial inquiry is directed to the scope of the claimed subject matter. During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, and the claim language is to be read in view of the specification as it would be interpreted by one of ordinary skill in the art. *In re Morris*, 127 F.3d 1048, 1053-54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

Our construction of the subject matter defined by appellants' claim 12 is that the claimed subject matter is directed to a "composite material" which has an intended use for screening solar radiation. Our view is entirely consistent with that of the Appellants who disclose that, "[t]he aim of the invention is to provide a composite

material for the screening of intensive irradiation by sunlight....” (Specification, page 3, last paragraph). Moreover, it is further disclosed in the specification that the composite material is used “preferably in plant cultivation.” (Specification page, 5, line 28). The language of the specification however, does not limit the utilization of the material to plant cultivation, particularly as the Appellants state, page 5, lines 32-33, that it can be used “as a substrate film.” Accordingly, we conclude that any composite material capable of screening solar radiation falls within the scope of the claimed subject matter.

In order for a claimed invention to be anticipated under 35 U.S.C. § 102, all of the elements of the claim must be found in one reference. *See Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Armanini describes decorative objects with multi-colored effects. These objects can be obtained by coating a transparent substrate with a combined transparent film-forming medium, an interference pigment and an absorption colorant to form a composite material. (Column 3, lines 23-29). Armanini discloses any object which is transparent or semitransparent can be coated with or formed from the combined transparent film-forming medium, an interference pigment and an absorption colorant. (Column 4, lines 41-46). Example 4 describes thermoplastic sheet formed from low

density polyethylene having a green interference pigment and a blue colorant dispersed therein. These sheets can be cut into pieces and mounted between two pieces of glass. (Column 6, lines 8-31). Armanini discloses the transmission color is determined by holding the object, e.g. slides, to daylight to observe the colors produced. (Column 3, lines 57-66). Accordingly, we conclude that the sheets function as a solar screening material within the scope of the claimed subject matter.

The claimed invention is directed to a composite, suitable for use as a solar radiation screening material, comprising a green interference pigment and a transparent polymer. Armanini's Example 4 describes a composite material within the scope of claim 12. The material of Example 4 is said to have a purple transmission color. (Column 6, lines 26-27). Armanini discloses the transmission color of the formed products are determined by viewing the products visually in daylight. (Column 3, line 57 to column 4, line 1). Thus, the determination of the transmission color of the Example 4 product would also function to screen solar radiation from the daylight.

Appellants urge Armanini is directed to decorative effects and there is no motivation to deduce the present invention. Appellants also urge, "the use of Armanini's article as covering for greenhouses would have the disadvantage that incident light which is utilizable for the plant would be absorbed by the absorption pigment." (Brief, paragraph bridging pages 4 and 5). Armanini's Example 4 discloses a

composite material which anticipates the subject matter of the claim 12. The transmission color of the material is determined by viewing the color resulting from daylight transmitting through the material. Thus, when determining the transmission color of the material of Example 4, it would necessarily function as a solar screening material. Furthermore, claim 12 is not limited to Appellants' argued intended use as a covering for greenhouses as discussed *supra*. That is, claim 12 is not limited to using the composite material for greenhouses. Further, claim 12 does not exclude the presence of an absorption pigment because the claim contains the open claim language "which comprises".² Accordingly, Armanini's Example 4 describes a composite material which establishes a *prima facie* case of anticipation of the claimed subject matter.

We have not been directed to evidence that establishes the presence of an absorption pigment would effect the solar radiation screening properties of composite materials.

Appellants proffered evidence to demonstrate that the claimed invention exhibits properties which are unexpectedly superior to Armanini. Specifically,

² When a claim uses "which comprises" as its transitional phrase, that use creates a presumption that the recited limitations are only part of the claimed subject matter and do not exclude additional, unrecited elements. *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986).

Appeal No. 1998-1412
Application No. 08/397,124

Appellants submitted a Declaration under Rule 37 CFR 1.132, paper no. 13, filed May 5, 1997, to support their belief that selective screening of radiation will influence plant growth. (Brief, page 5, first full paragraph). The claims have been rejected under § 102(b) as anticipated by Armanini. Anticipation under 35 U.S.C. § 102 is an essentially irrebuttable question of fact. See, *In re Malagari*, 499 F.2d 1289, 182 USPQ 549, 553 (CCPA 1974), wherein the court stated that anticipation “cannot be overcome by evidence of unexpected results or teachings away in the art.”citing, *In re Wiggins*, 488 F.2d 538, 179 USPQ 421 (CCPA 1973). Consequently, Appellants evidence of unexpected results is not probative.

CONCLUSION

The rejection of claims 12-17 as anticipated by Armanini under 35 U.S.C. § 102(b) affirmed.

Appeal No. 1998-1412
Application No. 08/397,124

Time for taking action

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED

PAUL LIEBERMAN)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CATHERINE TIMM)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
JEFFREY T. SMITH)	
Administrative Patent Judge)	

JTS/kis
JOHN KURUCZ

Appeal No. 1998-1412
Application No. 08/397,124

KANE, DALSIMER, SULLIVAN,
KURUCZ, LEVY, EISELE & RICHARD
711 THIRD AVENUE
NEW YORK, NY 10017